BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

VICKI GAUGHAN Claimant	}
VS.))))))))))
MIDLAND CREDIT MANAGEMENT Respondent) Docket No. 183,505)
AND	\(\)
TRAVELERS INSURANCE Insurance Carrier	}

ORDER

ON the 19th day of May, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of an Order entered by Administrative Law Judge George R. Robertson, dated March 14, 1994, came on for oral argument.

APPEARANCES

Claimant appeared by and through her attorney, Kelly W. Johnston of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Scott J. Mann of Hutchinson, Kansas. There were no other appearances.

RECORD

The record in this matter consists of the documents filed of record with the Division of Workers Compensation in this docketed matter, including the Preliminary Hearing heard before Administrative Law Judge George R. Robertson on December 9, 1993, and the exhibits attached thereto; and, the Motion Hearing heard before Administrative Law Judge George R. Robertson on March 9, 1994, and the exhibits attached thereto.

ISSUES

Whether claimant is entitled to penalties pursuant to K.S.A. 44-512a due to the respondent's delayed payment of medical mileage.

IT IS SO ORDERED.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds:

(1) That penalties pursuant to K.S.A. 44-512a are not applicable.

On December 20, 1993, the attorney for the claimant provided to the attorney for the respondent and to Miss Dawn Short of Crawford & Company a demand for mileage payments for certain trips by the claimant to authorized treating physicians. The certified letter required payment "within 28 days of receipt hereof."

The representative of Crawford & Company, in following the instructions of the claimant's letter, paid the mileage on the twenty-eighth (28th) day of receipt of the letter.

K.S.A. 44-512a imposes civil penalties when an employer or its insurance carrier fail to pay compensation to a workers compensation claimant when due. While the language of K.S.A. 44-512a specifically speaks of twenty (20) days as being the time limit in question, the letter presented to both the respondent's attorney and to the insurance carrier by the claimant's attorney specified twenty-eight (28) days as the time frame for payment. The specific language of K.S.A. 44-512a(a) speaks of compensation awarded under the workers compensation act "not paid when due." In this instance, the attorney for the claimant designated the time frame within which payment was to be made, i.e. twenty-eight (28) days. To demand payment within twenty-eight (28) days by certified letter and then attempt to enforce the provisions of K.S.A. 44-512a in allowing penalties due to the respondent not having paid within twenty (20) days would be unfair. As such the Appeals Board finds penalties are not appropriate in this matter.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that claimant has failed in his burden of proving entitlement to penalties under K.S.A. 44-512a and the Order of Administrative Law Judge George R. Robertson dated March 14, 1994, denying penalties to claimant is affirmed on other grounds.

Dated this day of J	ıly, 1994.
	BOARD MEMBER
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	BOARD MEMBER

BOARD MEMBER

c: Kelly W. Johnston, PO Box 3089, Wichita, KS 67201-3089 Scott J. Mann, PO Box 2977, Hutchinson, KS 67504-2977 George R. Robertson, Administrative Law Judge George Gomez, Director